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UNCLAS SECTION 01 OF 06 PARIS 000026

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12958: N/A

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SUBJECT: Russia's Accession to the OECD - Chronology and Standards of Review

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REFTEL: PARIS 22

¶1. (U) Summary: This cable is part two of a two-part series. Part I (Reftel) outlined the broader challenges that Russia faces during the accession process to the Organization for Economic Cooperation and Development. This cable provides details on the chronology and the status of the accession examination to date. End Summary

#### Standards of Review for Accession

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¶2. (U) "The Roadmap for the Accession of the Russian Federation to the OECD Convention" (OECD Document C(2007)103/FINAL) outlines the criteria by which the OECD Council will eventually assess Russia's willingness and ability to assume the obligations of OECD membership. The Roadmap includes acceptance of the established body of OECD instruments, standards and benchmarks, coherence with OECD policy recommendations and a commitment to fundamental values. The Roadmap also stipulates that World Trade Organization (WTO) membership is considered essential for becoming an OECD member.

¶3. (U) Fundamental Values: Candidate countries are expected to share a core set of fundamental values held by current OECD members. The Roadmap delineates these as: "a commitment to pluralist democracy based on the rule of law and the respect for human rights, adherence to open and transparent market economy principle and a shared goal of sustainable development" which form the foundation of OECD membership and when taken together show "like-mindedness" with other OECD members. Fundamental values include a commitment to improving policies in both the national and international context. During the accession process OECD members may review a candidate country's progress towards these fundamental values at any time, but there is no specific committee or time frame stipulated for such a review.

¶4. (U) Willingness and Ability: In addition to meeting the like-mindedness criteria, Russia must "position itself" vis a vis all OECD instruments in force at the time of accession. There are more than 200 current instruments, including Conventions (e.g. Anti-Bribery), Decisions (e.g. PCBs), Recommendations (e.g. Broadband development), Guidelines (e.g. Multi-National Enterprises, Consumer Protection), Principles (Corporate Governance), rules, standards and benchmarks (e.g. positions on major multilateral

environmental agreements). If any new instruments are added prior to Accession, then Russia must position itself vis a vis these as well. Russia may refuse certain Acts, make declarations about, and/or take reservations to OECD legal instruments and/or policies. However, the Roadmap stipulates that such decisions by candidate countries should only occur "sparingly." Committees and ultimately Council will examine the Russian position vis a vis these instruments to determine whether Russia's position is consistent with the obligations of OECD membership.

15. (U) Coherence: Russian domestic policy will also be examined for its "degree of coherence" with certain common OECD policies by the "sectoral" committees (Health, Statistics, Trade, Public Governance, etc). These Committees cover areas for which there are generally no OECD legal instruments, but for which there are accepted standards. For example, the Public Governance Committee has a set of "Building Blocks and Guiding elements for Public Governance" which are used as a framework and benchmark tool to examine budget practices and procedures, human resource management, integrity in the public sector, transparency and accountability, etc.

#### THE PROCESS

16. (U) In June 2009 Russia submitted its 249 page Initial Memorandum which laid out in preliminary terms its position vis a vis over 200 OECD instruments. In the Memorandum, Russia either took a reservation to, requested an unspecified transition period or refused to adopt a certain number of OECD legal instruments in areas such as anti-bribery, liberalization of capital markets, co-production of films, control of trans-border movement of waste, environment and tourism, tax, fisheries, governance of multi-national enterprises, national treatment on access to local bank credit and shipbuilding. Following the Initial Memorandum, the

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Secretariat drew up a calendar for review by each of OECD's twenty two committees. Each committee has sent Russia a detailed questionnaire which supplements the information provided in the initial memorandum. Committee review requires extensive Secretariat resources, including travel by staff to Russia, and extensive legal review before dissemination to member states. Committees were instructed not to go beyond either "preliminary" or "first round" discussion with a view to providing information for the Secretary General's report on Russia Accession at the Ministerial Council Meeting, May 27-28, 2010.

#### COMMITTEE REVIEWS

17. (SBU) Following is a status report on the preliminary or first round discussions in OECD Committees.

--Committee for Agriculture: (Coherence) In its initial Memorandum, Russia declared that it shares the principles and objectives of the Committee and agreed to abide by its principles. The Committee has not scheduled a review for Russian Accession (which indicates that the information requested from Russia was not received, or was incomplete.)

--Working Group on Bribery: (Willingness and Ability) In its Initial Memorandum, Russia expressed its commitment to abide by the principles of the Working Group, but requested an unspecified transition period for implementation. Russian First Deputy Minister of Justice Aleksander Fedorov led a delegation to the OECD in December 2009 and informed OECD officials that Russia was interested to begin the process of joining the Convention on Anti-Bribery. Officials from the OECD office of the Legal Advisor flew to Russia the following week, of December 14, 2009, to do an initial assessment of Russia's legal structure. The OECD Legal Advisor reports that Russians thought their laws met the requirements of the OECD Anti-Bribery Convention, but that this was not the case. In particular, the Legal Adviser notes Russia would need to pass a law criminalizing bribes to foreign officials. While OECD staff have praised the transfer of responsibility for anti-bribery to the Justice Ministry and view Fedorov as a serious interlocutor, they

note Russia has not made progress as quickly as they had hoped. In October, the Secretariat had delivered an extremely negative report on Russia's progress, explaining that the Russian response to the accession questionnaire was incomplete and sloppy. As a result, the Russian accession preliminary review was moved back from December to March 2010. Despite the interest expressed, the Secretariat has informed USDEL that the Russian Ministry of Justice is unlikely to have completed the necessary work for the March 2010 review, which will thereby result in further delays. A delegation of OECD staff (led by Deputy Secretary General Richard Boucher) will travel to Russia in February, to discuss this and other accession issues.

--Chemicals Committee: (Willingness and Ability) In its Initial Memorandum, Russia declared it shared the principles and aims of the Committee but requested a unspecified transition period for implementation. The Committee will hold its First Round of discussions in February 2010. One of the issues likely to be discussed is the need to provide a specific time frame for the transition period.

-- Competition Committee: (Willingness and Ability) Russia has been an active member of the Competition Committee for more than ten years. In its Initial Memorandum Russia agreed to abide by the Committee's principles with a reservation with regard to invisible transactions, liberalization of capital movement, and the OECD's Declaration on Multinational Companies. At its meeting in October, the Competition Committee (CC) held its First Round of discussions and the Russian delegation gave a well received presentation. The CC had additional questions regarding Russia's experience with the 2009 amendments to the anti-monopoly law; the "cartel" cases that are being brought under the anticompetitive agreements provisions (the concern is that many are not truly cartels); special state entities that have been created in recent years and seem immune from the competition law (the concern is that many are "national champions" - large state-owned companies that could act as monopolist forces with impunity; and Russia's position on the new Council Recommendation on Competition Assessment. These need to be answered by Russia before the Competition Committee's scheduled

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interim discussions in February 2010.

-- Consumer Policy Committee: (Willingness and Ability) In its Initial Memorandum, Russia agreed to abide by the Committee's policies and declarations. The Committee is scheduled to hold its First Round of discussions in April 2010.

-- Development Assistance Committee: (Coherence) In its Initial Memorandum, Russia committed to abide by the principles of this Committee, but requested an unspecified transition period to come into compliance. The Committee does not currently have a schedule for Russia Accession review.

--Education: (Coherence) In its Initial Memorandum, Russia refused to accept the Committee's Guidelines for Quality Provision in Cross-Border higher Education. The Committee does not currently have a schedule for Russia Accession review.

--Employment, Labor and Social Affairs Committee: (Coherence) In its Initial Memorandum, Russia agreed to abide by the Committee's principles. The Committee is scheduled to hold its First Round of discussions in April, 2010.

--Environment: (Willingness and Ability) In its Initial Memorandum, Russia declared it shared the principles and aims of the Committee but requested a unspecified transition period for implementation. The Committee plans to have the First Discussions on Russia at its meeting in April, 2010 pending Russia's provision of its "Brief Note on Russia's Environmental Policy and Institutional Framework" - a background document for discussion. The Russians have also promised to make a presentation on the same topic at the meeting. The First Review is planned for the Committee meeting in 2011 (delayed from June 2010) and will focus on reviewing Russia's positions with regard to OECD legal instruments related to environment. The Russian Federation will officially begin its Accession-related presentations for the Committee's Working Group on Waste Prevention and Recycling at the next meeting in October 2010.

The Committee has asked Russia to revise its Initial Memorandum to indicate more clearly how many years they may need in order to comply with the OECD requirements and also to identify the actions that they plan to carry out during that period. OECD Secretariat staff report that Russia's institutional framework on environment and chemicals is very complex and there is very little coordination between the different ministries and agencies. During an OECD mission to Russia by Environmental Directorate staff in early December, it was reported that the Ministry of Natural Resources and Environment finally showed some commitment and interest in the accession process.

--Committee on Financial Markets: (Willingness and Ability) In its Initial Memorandum, Russia expressed a readiness to follow the Committee's principles. However, Russia took a reservation to the Council Recommendation on Disclosure Requirements and Procedures applicable to public securities, with regard to consultation with foreign individuals. Russia also took a reservation to the Code on capital market liberalization and the Code on current invisible operations liberalization. The Committee is scheduled to meet in April. If Russian responses are received in time, an initial review could be added to the agenda.

--Fiscal Affairs: (Willingness and Ability) In its Initial Memorandum, Russia took a considerable number of reservations and requested unspecified transition periods to bring its system into compliance with the Committee. The Committee's Working Parties 1, 8, and 6, 9, and 2, and its Forum on Harmful Tax Practices held their preliminary discussion in September, October, and November respectively. In Working Party 1, Russia indicated that it would drop the reservation it signaled in its Initial Memorandum to retain the right to include payments for technical services in a separate article as no other OECD nation had a similar reservation. Working Party 8's preliminary review raised concerns about Russia's tax codes, in particular aspects concerning foreign currency transactions. The U.S. delegation expressed concern regarding the lack of confidentiality for tax information (tax id numbers, violations of tax rules, and investigative information). Working Parties 1, and 8 and 9 will hold their First Rounds in February and April 2010 respectively.

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--Fisheries Committee: (Coherence) In its Initial Memorandum, the Russian Federation declined to accept the Committee's Guidelines for the Design and Implementation of Decommissioning Schemes in the Fishing Sector. The Committee has not schedule accession discussions.

--Health: (Coherence) In its Initial Memorandum, as there are no instruments in this field, the Russian Federation made no declarations about its position with respect to Health policy. The Health Committee was unable to hold its preliminary discussion in July due to the unresponsiveness to its inquiries by the Russian Ministry of Health. The Committee Chair wrote to the Russian Government in July to express the Committee's disappointment but affirmed the Health Committee's willingness to continue to cooperate with Russia. When the Committee met in early December, the Director of the Employment, Labor and Social Affairs Directorate reported that the Committee still has not received any official reaction from Russia to the Committee's "Draft Review." A representative of the Russian government was present during the Director's presentation. The Director anticipates that the Committee will not be able to send its final recommendation on Russian accession until late 2011 or early 2012, given the current pace of the review.

--Committee for Information, Computer and Communications Policy: (Willingness and Ability) In its Initial Memorandum, Russia expressed its readiness to follow the Committee's principles, however it requested a transition period in the Electronic Commerce arena. Preliminary Discussion scheduled for March, 2010.

--Insurance and Private Pensions: (Willingness and Ability) In its Initial Memorandum, Russia rejected the Council's recommendation on Common Classifications of the Classes of Insurance. Additionally, the Russian Federation requested an unspecified transition period

for other Committee policies. At the Working Party on Insurance and Private Pensions meeting in November, the Committee held its preliminary discussions and heard a presentation from the Russian Government. Work is progressing slowly as Russia's system of regulating insurance and private pensions is complex. Russia also has inflation challenges, e.g., corporate and government bonds seem not to have kept up with inflation over the past half dozen years which may create liquidity problems in the future. US Delegates requested additional information about Russia's foreign equity cap rules, licensing processes, and Federal oversight of the sector. The First Round of discussions are tentatively scheduled for July 2010.

--Investment Committee: (Willingness and Ability) In its Initial Memorandum, Russia agreed to recommend that multinational enterprise doing business in Russia would follow the Provisions of Attachment 1 of the Guidelines on Multinational Enterprises. Russia also requested a transition period to establish a National Contact Point, a requirement of the Guidelines. Russia also agreed to abide in general by the Committees rules on National Treatment and agreed to take into account the Committees recommendation and attempt to eliminate or minimize conflicting requirements. Russia requested an unspecified transition period to meet the OECD Benchmark Definition of Direct Foreign Investment's requirements. The Committee has scheduled its First Round of discussions for March 2010.

--Public Governance Committee/Regulatory Policy Committee: (Coherence) In its Initial Memorandum, Russia expressed a willingness to abide by the council recommendation for "Enhancing Integrity in Public Procurement" and the OECD "Guidelines for Managing Conflict of Interest in the Public Service" and other Committee policy principles. The First Round is scheduled for April 2010, with a more detailed assessment in the fall. In its preparatory work for the April meetings, the Committees are struggling a bit with the Russian responses to its initial questionnaires which are incomplete and in some cases contradictory. The Committees are also facing a further complication in that the questionnaire responses do not site the source within the Russian government-- making clarification extremely difficult.

--Committee on Scientific Technological Policy: (Willingness and Ability) In its Initial Memorandum, the Russian Federation agreed to abide by the Committee's principles. The Committee is scheduled

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to hold its First Round in March 2010.

--Shipbuilding and Maritime Transport: (Coherence) In its Initial Memorandum, the Russian Federation expressed a willingness to follow the Committee's principles, but took several exceptions and requested an unspecified transition period to adapt Russian legislation to certain principles.

--Committee on Statistics: (Coherence) First round of discussions tentatively scheduled for June 2010.

--Steel Committee: (Coherence) First Round tentatively scheduled for May 2010.

--Trade Committee: (Coherence) In its Initial Memorandum, Russia requested a transition period to implement the recommendations on Common Approaches on the Environment and Officially supported Export Credits, Procedures for Labeling Pharmaceutical Specialties, and the Administrative and Technical Regulations which Hamper the Expansion of Trade. At the December 2009, Trade Committee meeting, all members that spoke indicated support for Russia's accession to the OECD. They, along with the OECD Legal Division, also noted the requirement for WTO accession as a pre-condition to OECD accession. The EU outlined a long list of areas where information in the review lacks sufficient detail. Several members noted that Russia has recently implemented a number of protectionist measures in response to the economic crisis. Others noted that implementation of legal frameworks is very important. The U.S. noted that we were not yet in a position to comment on this draft review and were looking to see advances in Russia's accession to the WTO before we could provide comments.

--Tourism Committee: (Coherence) In its Initial Memorandum, the Russian Federation took exceptions to the OECD recommendations on duty free entry and requested an unspecified transition period to implement the recommendation on Protection of Tourists who use Air Package Tours. There is no information on when this Committee will conduct its Russia accession reviews.

--Economic Development Review Committee: Russia's accession review is tentatively scheduled for April 11, 2010.

--Steering Group on Corporate Governance: There is no information on when this Committee will conduct its Russia accession reviews.

#### Accession Chronology

18. (SBU) In November 2007, the OECD Council adopted the Russia's Roadmap for Accession. The initial assumption by the Secretariat was that Accession for all the invitees (Chile, Estonia, Israel, Russia and Slovenia) would be a two year processes concluding in late 2009 or early 2010.

June 2009 - Russia transmitted its initial memorandum detailing its position on more than 200 OECD legal instruments, more than one year after the other candidate countries. Additionally, the document was in Russian, not English or French as required, and it was incomplete. This marked the formal starting point for the technical review's of Russia's adherence to the Roadmap's requirements for accession.

July 2009 - The Secretary General led a mission to Russia. The OECD team met with the Russian Ministry of Economic Development, (Russia's Accession Coordinating ministry), and answered questions on next steps. The OECD also requested designated technical points of contact for each OECD Committee within the appropriate line ministries (Health, Environment, Finance, Education, etc). (Note: The Public Governance and Consumer Policy committees still do not have official POCs) Additionally, OECD staff met with the Russian ministries of investment, corporate governance, fiscal affairs, environment and anti-corruption.

July-September 2009 - Committees began preparation of their Draft Initial Reviews and issued questionnaires to the Russian Government.

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September 2009 - The Secretary General's office transmitted Russia's initial memorandum to member states

October 2009 - The Secretary General sent a letter to the First Deputy Prime Minister, Igor Shuvalov, which drew attention to the difficulties being encountered by a number of committees to receive information from the Russian Government.

October - December 2009 some committees received "initial" responses from the Russian Government; most were late and incomplete. The Competition Committee held its First Round of discussions with the Russian Government.

October - December 2009 - the Committee on Fiscal Affairs, Private Pensions and Insurance and Trade Committees held preliminary discussions on Russia to determine what additional information is required.

January 2010 - May 2010 - The Secretariat had tentatively scheduled all remaining preliminary and subsequent First Round of reviews prior to the Ministerial Council Meeting (MCM) in May 2010. As it is clear that the schedule will not hold, the Secretary General will bring the matter to the attention of members in the February Council session and propose a new time-table with consideration pushed out into 2011 and 2012 (reftel).

Monroe